

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

In re: §  
§ CASE NO. 08-35653-KRH-11  
CIRCUIT CITY STORES, INC. §  
§ Chapter 11  
Debtor §

**OBJECTION OF THE TEXAS COMPTROLLER AND  
TEXAS WORKFORCE COMMISSION TO DEBTORS' MOTION  
TO SHORTEN GOVERNMENTAL BAR DATE**

The Texas Comptroller of Public Accounts ("Comptroller") and Texas Workforce Commission ("TWC"), appearing through the Texas Attorney General's Office, object to the Debtors' Motion for Order Pursuant to Bankruptcy Code Sections 105 and 502, et seq. (the "Bar Date Motion").

1. The Bar Date Motion seeks to amend 11 U.S.C. § 502(b)(9) by shortening the governmental bar date to February 27, 2009. There is no authority for such relief, and the Bar Date Motion cites none. The Comptroller and TWC object.
2. Neither 11 U.S.C. § 105 nor any Bankruptcy Rule provides authority for a court to amend the clear, specific statutory language of § 502(b)(9), which provides that a governmental unit's claim "shall" be timely if filed within 180 days after the order for relief.
3. Court orders purportedly amending the statutory government bar date are ineffective, since they conflict with clear statutory provisions. In re George Transfer, Inc., 212 B.R. 475 (Bankr. D. Md. 1997)(governmental unit's claim filed within statutory 180-day bar date was timely despite earlier bar date issued by court pursuant to rule; neither rules nor § 105 can override clear statutory provision of § 502(b)(9)).
4. The Comptroller and TWC also object to Debtors' attempt to deprive governmental units

across the country of due process with respect to the inappropriate attempt to shorten the governmental bar date. The Bar Date Motion was filed at 11:38 p.m. on Tuesday, November 25, and therefore would not likely be read even by creditors on the ECF list until Wednesday, November 26, the day before the Thanksgiving holiday. A response deadline of Wednesday, December 3 and hearing date of Friday, December 5 were noticed at the same time.

5. The Debtors conduct a nationwide business. Many state and local tax authorities and other governmental units have not filed ECF notices of appearance yet in this less-than-month-old case. Mailed notices of the Bar Date Motion and deadlines are unlikely to reach most governmental units until December 1 or later. That is inadequate notice of a December 3 deadline and December 5 hearing. Indeed, the Debtors' efforts to deprive, with inadequate notice, widely-scattered governmental units of statutory rights demonstrates quite well the very problem Congress solved when it amended § 502(b)(9) to provide a 180-day governmental bar date. Governmental units are involuntary creditors who may require additional time to determine if they have claims against debtors. The effort of these Debtors to overrule Congress' judgment and shorten a governmental bar date in an inadequately-noticed hearing conducted less than one month after the petition date is outrageous and should not be countenanced.

Wherefore, the Texas Comptroller and TWC request that the Bar Date Motion be denied insofar as it seeks to shorten any bar date for a governmental unit. The Texas Comptroller and TWC also request such other relief to which they may be entitled.

Respectfully submitted,

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*/s/ Mark Browning*

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ATTORNEYS FOR THE TEXAS  
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**CERTIFICATE OF SERVICE**

I certify that on November 26, 2008, a true copy of the foregoing was served by the method and to the following parties as indicated:

By Regular First Class Mail:

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